Supreme Court, U. S.
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In The

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1083

MRS. T. C. SIMPSON,
Petitioner,

vs.

HARL O'NEAL,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent relies upon the statement of the case as it appears in the first portion of the opinion of the Mississippi Supreme Court in this matter and upon the sound reasoning of that Court and the authorities there cited. Petitioner has in her statement of the case filed herein omitted several facts which were important to the decision made in this case by the Supreme Court of Mississippi. These deficiencies can be found by referring to the majority opinion of the Mississippi Supreme Court.

First, the Respondent refers to the appointment by Mrs. Simpson of two poll watchers, Mrs. Fannie Smith and Mrs. Elizabeth Daniels, as being "in accordance with the applicable laws of Mississippi." The only applicable law of Mississippi is Section 23-5-109 of the Mississippi Code of 1972, a copy of which is included in the Appendix to this Response. The only lawful purpose for appointing

poll watchers under this statute is to detect and challenge illegal voters. The Mississippi Supreme Court on reviewing the record at 350 So.2d, page 999, found:

> "On the day before the general election of November 4, 1975, Mrs. Simpson gave written authority to Mrs. Elizabeth Daniels and Mrs. Fannie Smith (hereinafter called poll watchers) to act on her behalf at the Darling voting precinct. Mrs. Simpson testified that, although she appointed poll watchers, she had no reason to distrust the election officials, managers, clerks or bailiffs and *admitted that she appointed the poll watchers to support her candidacy.* The poll watchers did not challenge a single voter throughout the voting. (Emphasis supplied)
>
> "The poll watchers assisted approximately one hundred persons out of three hundred fifty-nine votes cast at the Darling precinct."

Next, the Petitioner states in her Petition that the election officials conferred and determined "that anyone who could not read or write (or was blind or physically disabled) was entitled to assistance from anyone of that voter's choosing." The actual determination by the managers had nothing to do with whether or not a person who offered to vote was illiterate or otherwise disabled but was that anyone who wanted assistance could get anyone to help them without regard to need. The Mississippi Supreme Court at 350 So.2d, page 1000, found:

> ". . . After a conference the managers concluded that the assistance was proper. One of the managers at the Darling precinct testified:
>
> "The way the rule was interpreted to us, that *anyone that wanted help could ask anyone to go to the booth and help them vote.* And that was the way the thing was interpreted to us and that's the way it went all day. (Emphasis supplied)

> "The poll watchers were permitted to assist voters throughout the day . . . ."

and on page 1000 also found:

> "The managers of the election did not make any effort to determine if voters were entitled to assistance under applicable Mississippi statutes. To the contrary, the managers were under the belief that *any person who desired assistance could receive it.*" (Emphasis supplied)

Petitioner, in her Statement of Fact, claims: "Not one single witness testified that any person violated the secrecy of a ballot by imposing his assistance on an unwilling voter." This is a novel statement for an election case and implies that it is permissible for any voter in Mississippi to voluntarily violate the secrecy of his ballot. Mississippi and indeed other states have more regard than this for the secrecy of the ballot. The Mississippi Court found in this case, based upon Mississippi statutes and upon sound authority from other jurisdictions, that laws to preserve the secrecy of the ballot are mandatory.

In this case, the Respondent demonstrated at the trial through the direct and undisputed testimony of the officials who held this election at Darling that the secrecy of the ballot of 70 voters was violated by political supporters of the Petitioner contrary to Mississippi law. These 70 voters demonstrated that they were not illiterate by signing their own names to the poll book. Under these circumstances, the Court could have disregarded the Darling precinct box and determined the election in favor of Mr. O'Neal based upon the other boxes, but rather chose to declare a special election.

REASONS FOR DENYING THE WRIT

The decision of the Mississippi Supreme Court in this case construes statutes with regard to elections in the State of Mississippi which were in effect before the Voting Rights Act of 1965. The construction placed upon these statutes is entirely reasonable and logical and in addition will be an invaluable statement to insure fairness and equity in all future elections. The Court held that the overriding purpose of Section 23-5-159 Mississippi Code of 1972, a copy of which is included in the Appendix hereto, making it a crime to violate the secrecy of the ballot was to guard the secrecy of the ballot and so that we might have fair and free elections which express the will of the voters. The Court made the sound finding that the secrecy of the ballot is a right personal to the voter and he cannot be deprived of this right and his ballot cannot be exposed except out of necessity as the result of a condition of the voter which precludes him from casting his ballot without assistance, and then only when the voter himself describes the condition and requests the assistance provided by law.

The Mississippi Supreme Court summarized its decision in this case at 350 So.2d 1012, page 47a of the Petition herein, by finding:

> "1. That statutes that have as their purpose preservation of secret ballots are mandatory.
>
> "2. That all voters are not entitled to have another person accompany them into a voting booth to assist them in marking their ballots.
>
> "3. That only blind, physically disabled or illiterate voters may have a person accompany them into a voting booth for the purpose of assisting a voter mark his ballot, and this only after the voter himself has declared his disability and requested assistance, and the managers of the election are satisfied that the claimed disability exists."

These three findings are entirely supported by Mississippi statutes and case law and in case law of other jurisdictions and their justice is evident.

These three basic rules prevent political supporters from becoming "poll watchers" for the sole purpose of supporting the candidacy of another person. These rules are in accord with the purpose of the Voting Rights Act to provide fair elections. These rules are based upon statutes and decisions passed and in effect before the Voting Rights Act of 1965. These simple fair rules violate no constitutional rights of any party, neither voter nor candidate, but rather protect the rights of voter and candidate alike. These simple, fair rules were violated over 70 times at the Darling precinct by Petitioner's political supporters, who assisted voters without regard to illiteracy or other need for help.

There is nothing new or novel in the decision of the Mississippi Supreme Court in this case protecting the secrecy of the ballot. This decision, based upon statutes and other decisions that were passed and handed down before the Voting Rights Act, obviously requires no approval under the Voting Rights Act.

The rendering of a judgment by the Mississippi Supreme Court in a case of this kind is standard procedure. A question of law only was presented on this appeal when the only evidence before the Court was the undisputed testimony of the election officials showing a flagrant violation of mandatory election laws by political supporters

of the Petitioner. No question of fact is presented for a jury to determine, only a question of law for the Court. Even when parties in a civil suit such as is here presented are entitled to a jury, the Court will render judgment when there is no question of fact to be decided. This practice by the Mississippi Supreme Court in civil cases is so universal that no authority is deemed necessary.

Petitioner has already served over two years in a capacity to which she was not fairly elected. This Court should deny the Petition for Writ of Certiorari so that a fair election can be held for Supervisor, Beat 1, Quitman County, Mississippi.

Respectfully submitted,

JOHN W. DULANEY, JR.
WILLIAM P. DULANEY
Attorneys for Respondent

APPENDIX

§ 23-5-109. Duty of election bailiff.

It shall be the duty of the bailiff to be present at the voting place, and to take such steps as will accomplish the purpose of his appointment, and he shall have full power to do so, and he may summon to his aid all persons present at the voting place. A space thirty feet in every direction from the polls, or the room in which the election is held, shall be kept open and clear of all persons except the election officers and two challengers of good conduct and behavior, selected by each party to detect and challenge illegal voters; and the electors shall approach the polls from one direction, line, door, or passage, and depart in another as nearly opposite as convenient.

SOURCES: Codes, 1880, § 130; 1892, § 3640; 1906, § 4147; Hemingway's 1917, § 6781; 1930, § 6219; 1942, § 3248.

§ 23-5-159. Secrecy; penalties to enforce.

Any voter who shall, except as herein provided, allow his ballot to be seen by any person, or who shall make a false statement as to his inability to mark his ballot, or who shall place any mark upon his ballot by which it can afterwards be identified as the one voted by him, or any person who shall interfere or attempt to interfere with any voter when inside the compartment or inclosed place, or when marking his ballot, or who shall endeavor to induce any voter, before voting, to show how he will mark, or after voting how he has marked his ballot, shall be punished by a fine of not less than twenty-five dollars

nor more than one hundred dollars; and the election officers shall cause any person so violating the law to be arrested and carried before the proper officer or tribunal for commitment and trial for such offense.

SOURCES: Codes, 1892, § 3668; 1906, § 4175; Hemingway's 1917, § 6809; 1930, § 6245; 1942, § 3274.